Supreme Court, U. S.
FILED
JUN 18 1979
MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1854

LENNIE B. WARREN and EVERETTE R. WARREN,
*Appellants,*

VERSUS

SUN OIL COMPANY (Delaware), a Corporation,
*Appellee.*

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

## JURISDICTIONAL STATEMENT

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June, 1979

UTTERBACK TYPESETTING CO., 819 W. CALIF., OKLAHOMA CITY. PH. 235-0030

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In the

Supreme Court of the United States

OCTOBER TERM, 1978

No. ———

LENNIE B. WARREN and EVERETTE R. WARREN,
*Appellants,*

VERSUS

SUN OIL COMPANY (Delaware), a Corporation,
*Appellee.*

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

## JURISDICTIONAL STATEMENT

Lennie B. Warren and Everette R. Warren, the Appellants, appeal from the final judgment of the Supreme Court of Oklahoma, dated February 15, 1979, holding that Title 52 Oklahoma Statutes, Section 287.1 *et seq.*, providing for conservation of oil and gas, as applied in this case, are not unconstitutional as being violative of the Appellants' right to substantive due process of law under the Fourteenth Amendment of the Constitution of the United States.

## OPINIONS BELOW

The opinion of the Supreme Court of Oklahoma, which appears in the appendix hereto (p. 1-a, *infra*), was issued "not for publication."

## JURISDICTION

The judgment of the Court of Appeals of Oklahoma, Division II, bound the Appellants to the terms of a compulsory unitization order issued by the Oklahoma Corporation Commission[1] although the Appellants' mineral interest in an 80-acre tract of land subject to the unitization order was not under lease. A petition for rehearing was entertained and denied on September 21, 1978. A petition for writ of certiorari was filed with the Supreme Court of Oklahoma on October 5, 1978. The writ of certiorari was denied on February 12, 1979 and mandate issued as of February 15, 1979.

A supplementary notice of appeal to this Court was duly filed in the Supreme Court of Oklahoma on March 21, 1979 (See page A-6, *infra*).

This appeal is being docketed in this Court within the 30-day extension of time granted by Mr. Justice White on May 13, 1979 (See page A-7, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

## QUESTION PRESENTED

Whether Title 52 O.S. § 287.5 and § 287.13 are violative of the Fourteenth Amendment of the Constitution of the United States when applied to a fee simple mineral owner whose mineral interest is not subject to lease.

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[1] On January 16, 1974, the Oklahoma Corporation Commission issued an order creating the "Hawley West Unit."



## CONSTITUTIONAL PROVISIONS AND RULES

Fourteenth Amendment, United States Constitution:

> "... nor shall any state deprive any person of life, liberty, or property, without due process of law; ..."

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52 Oklahoma Statutes § 287.5—Ratification or Approval of Plan by Lessees and Owners:

> "No order of the Commission creating a unit and prescribing the plan of unitization applicable thereto shall become effective unless and until the plan of unitization has been signed, or in writing ratified or approved by lessees of record of not less than sixty-three percent (63%) of the unit area affected thereby and by owners of record of not less than sixty-three percent (63%) (exclusive of royalty interests owned by lessees or by subsidiaries of any lessee) of the normal one-eighth (1/8th) royalty interest in and to the unit area, and the Commission has made a finding of either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area. Where the plan of unitization has not been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area at the time the order creating the unit is made, the Commission shall, upon petition and notice, hold such additional and supplemental hearings as may be requested or required to determine if and when the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area and shall, in respect to such hearings, make an entry finding of its determination in such

regard. In the event lessees and royalty owners, or either, owning the required percentage interest in and to the unit area have not so signed, ratified, or approved the plan of unitization within a period of six (6) months from and after the date on which the order creating the unit is made, the order creating the unit shall cease to be in further force and effect and shall be revoked by the Commission."

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Section 287.13—Definitions:

"(a) The term 'lessee' refers not only to lessees under oil and gas leases but also to the owners of unleased lands or mineral rights having the right to develop the same for oil and gas. * * *"

## RAISING THE FEDERAL QUESTION

The Fourteenth Amendment claim was raised by Appellant before the Court of Appeals of Oklahoma, Division II in their Petition for Rehearing. There the Appellants claimed if 52 O.S. § 287.5 permits the Oklahoma Corporation Commission to "authorize compulsory unitization of landowners property when there is no valid lease, then such statutes are in violation of the Fourteenth Amendment to the Constitution of the United States, and this Court should so hold." The Court denied the motion for rehearing. This claim was reiterated in Appellants' writ of certiorari to the Oklahoma Supreme Court wherein the Appellants stated ". . . that any provision of 52 O.S. § 287.5 . . . that purports to grant authority for the unitization of property not under lease is in violation of the due process law of the Oklahoma Constitution and the Fourteenth Amendment to the Constitution of the United States." Thus



both the Oklahoma Court of Appeals, Division II, and the Oklahoma Supreme Court considered and expressly rejected the Federal Constitutional Claim.

## STATEMENT OF THE CASE

Appellant Lennis B. Warren is the owner in fee simple of the surface and the minerals of an 80-acre tract of land in Grant County, Oklahoma. This property was not under an oil and gas lease on January 16, 1974, when the Oklahoma Corporation Commission issued its order creating the Hawley West Unit. Appellants' property was included in the unitized area covering the Mississippi Chat formation which was the common source of supply. Several wells had been drilled in the area covered by the unit with one located on Appellants' property. The well located on Appellants' property was used only for salt water injection; no production come from this well.

The Appellants' mineral interest in the 80-acre tract of land was not subject to any valid leases at the time the Hawley West Unit was created as a result of a successful suit brought by the Appellants to cancel all oil and gas leases on their property for lack of production.

In July 1976, Appellee, as a unit operator, attempted to enter Appellant's property to use the well located thereon as a water injection well and presumably recover oil from the other unit wells not located on Appellant's property. Appellants prevented Appellee from entering Appellants' property and Appellee obtained an ex parte temporary restraining order on July 9, 1976, restraining Appellants' interference.

Thus on July 9, 1976, Appellee, under the protection of the temporary injunction, entered upon the Appellant's land and dug ditches, constructed pipeline, constructed anchors of steel and concrete, made pipeline connections to the well and property of Appellants and began injecting salt water into a dry and abandoned well on Appellants' property.

On July 16, 1976, the Appellants filed an answer to the restraining action filed by Appellees denying that Appellee had a right of entry upon the property involved in this action and challenged the jurisdiction and authority of the Corporation Commission of the State of Oklahoma to include the land involved in this appeal in the order of the Oklahoma Corporation Commission creating the Hawley West Unit. The Appellants' answer also pleaded the Oklahoma Corporation Commission order creating the Hawley West Unit was obtained by fraud. In addition the Appellant's filed a cross-petition against the Appellee for damages resulting from injury to the surface of the land and for removal of equipment belonging to Appellants. The Appellee denied these allegations.

At the July 23, 1976 hearing, the temporary injunction granted Appellee was quashed. Numerous other hearings on motions, etc., were held, including one unsuccessful attempt by Appellee to obtain a writ of prohibition from the Oklahoma Supreme Court.

On May 4, 1977, a pre-trial hearing was conducted where the Appellants provided the trial court with an exhibit stating the value of the property removed from Appellants' property was $15,160.00. The trial court entered



a summary judgment in the case finding the Oklahoma Corporation Commission order creating the Hawley West Unit was valid and Appellants were permanently enjoined from interfering with Appellee and its agents operations. The Appellants were granted $15,160.00 in damages for the equipment removed from the property.

On Appeal the Oklahoma Court of Appeals, Division II, affirmed the judgment of the court below in part remanding for further consideration certain unresolved issues relative to the amount of damages awarded the Appellants. The Court of Criminal Appeals, Division II, and the Oklahoma Supreme Court did not explain why the order of the Oklahoma Corporation Commission creating the Hawley West Unit did not violate the Fourteenth Amendment of the Constitution of the United States although both denied this allegation as grounds for relief.

## THE QUESTION IS SUBSTANTIAL

The question of whether a State Corporation Commission can force unitization of mineral interests which are allegedly a part of a common source of supply even though the mineral interests are under no valid lease and even though mineral owners do not wish to participate in the unit is a novel and substantial one. It has never been treated by this Court.

This Court has long recognized that unitization of separately owned tracts within a common source of supply of oil and gas is the acceptable means of accomplishing conservation of oil and gas and that such unitization is a valid exercise of a state's police power. See *Palmer*

*Oil Company* v. *Amarada Petroleum Corporation*, 343 U.S. 390, 72 S.Ct. 842, 96 L.Ed. 1022 (1952); *Hunter Company* v. *McHugh*, 320 U.S. 222, 64 S.Ct. 19, 88 L.Ed. 5 (1943); *Patterson* v. *Stanolind Oil and Gas Company*, 305 U.S. 376, 59 S.Ct. 259, 83 L.Ed. 231 (1939).

This Court has further recognized that provisions of a State Statute which require that a petition be filed by a designated percentage of interests of lessees and which also require that a proceeding be dismissed upon protest by a cerain percentage of lessees are not an unlawful delegation of legislative authority to private parties. See *Currin* v. *Wallace*, 306 U.S. 1, 59 S.Ct. 379, 83 L.Ed. 441 (1939); *Miller* v. *Schoene*, 276 U.S. 272, 48 S.Ct. 246, 72 L.Ed. 568 (1928).

However, Title 52 Okla. Stat. § 287.13(a) provides that the term "lessee" refers not only to lessees under oil and gas leases but also to the owners of *unleased* lands or mineral rights having the right to develop the same for oil and gas. Thus under the terms of Title 52 O.S. § 287.5 owners of unleased lands are equally subject to compulsory unitization orders issued by the Oklahoma Corporation Commission as are lessees and owners whose interests are subject to leases. This issue has never been brought squarely before this Court before. The Appellants urge that this effect of the Oklahoma Statutes establishing a procedure for unitization of common source of supplies of oil and gas is unconstitutional as it constitutes a taking of property without due process of law.

In *Palmer Oil Company* v. *Amarada Petroleum Corporation* (*supra*), two appeals were filed before this Court



challenging the constitutionality of certain Oklahoma statutes providing for unitized management of common sources of supply of oil and gas. Although this Court held that in light of its previous decisions the Appellants failed to raise any substantial federal questions and dismissed the appeals, the iissue brought before the Court here *was not* present in *Palmer*.

Appellants recognize that mineral owners who have leased their interest in same and lessees of mineral interests come within the purview of the State's police powers and hence are subject to compulsory unitization orders issued by the Oklahoma Corporation Commission.

However, Appellants urge that owners of mineral interests who are neither developing such interests on their own or have leased such interest to others for development have demonstrated *no* predisposition to develop sources of oil and gas and having demonstrated such, therefore have *not* placed themselves in a position to be subject to the State's police powers when such power is exercised for the purpose of conserving oil and gas. Here the Appellants have *no* desire to develop *any* oil and gas which might underlie their property. Thus they view any intrusion upon their land for the purpose of developing any oil and gas which might underlie their property as an unlawful intrusion and an unconstitutional taking of their property.

Appellants conceed that were they to lease the mineral interests to another or develop their mineral interests on their own they would then be subject to the order creating the Hawley West Unit. But Appellants have taken

no such action. Their position is that they wish no development to be undertaken by anyone whether under a lease or as a result of authority granted under the order creating the Hawley West Unit.

Since Appellants do not wish any development of their mineral interests by any party why, then, should Appellants' property not be protected by the Fourteenth Amendment to the Constitution of the United States. If the Statutes providing for compulsory unitization of common sources of supply of oil and gas is predicated solely upon a state's police powers to conserve oil and gas, surely conservation could go no further than the position of Appellants. They wish no development by any party whether by themselves, a lessee or a third party designated under a unitization order.

The absence of any conservation justification adds substantially to the Appellants' Fourteenth Amendment claim.

## CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

STEPHEN JONES
P. O. Box 3339
Enid, Oklahoma 73701

*Counsel for Appellants*

June, 1979

# APPENDIX

NOT FOR PUBLICATION

FILED
COURT OF APPEALS
STATE OF OKLAHOMA
AUG - 1 1978
ROSS N. LILLARD, JR.
CLERK

IN THE COURT OF APPEALS, DIVISION 2
STATE OF OKLAHOMA

| | | |
|---|---|---|
| Sun Oil Company (Delaware), a corporation, Appellee, | ) | |
| vs. | ) | No. 51,027 |
| Lennie B. Warren and Everett R. Warren, Appellants. | ) | |

APPEAL FROM THE DISTRICT COURT OF
GRANT COUNTY, OKLAHOMA

Honorable J. Russell Swanson, Trial Judge

Action by oil company to enjoin landowners from interfering with oil and gas unit operations. Landowners cross-petitioned for damages to compensate for surface injury and equipment removed. From summary judgment granting injunction and awarding landowners damages, landowners appeal.

AFFIRMED IN PART
AND REMANDED

James R. Cox & E. W. Shaw
Mitchell, DeClerck, Cox, Halstead & Lahman
Enid, Oklahoma — For Appellee

Alfred L. Maxwell
Lamb, Maxwell & Long
Enid, Oklahoma
and
Virgil R. Ball
Watonga, Oklahoma — For Appellans

BACON, J.

This appeal has as its foundation a suit to enjoin surface and partial-mineral owners (appellants) from interfering with the operator (appellee) of an oil and gas unit. Appellants cross-petitioned for damages. The trial court granted the unit operator the request for injunctive relief and awarded certain damages to appellants.

Appellants own the surface and a portion of the minerals of an 80-acre tract of land in Grant County, Oklahoma. The property was under oil and gas lease on January 16, 1974 when the Oklahoma Corporation Commission issued its order creating the Hawley West Unit. Appellants' property was included in the unitized area covering the "Mississippi Chat" formation which was the common source of supply. Appellants later answered interrogatories wherein it was admitted the "Missippi Chat" formation was under appellants' property. Several wells had been drilled in the area covered by the unit with one located on appellants' property.

In January of 1975 appellants filed suit to quiet title to their land and cancel the oil and gas leases on their property for lack of production. Appellants were successful in that suit with all oil and gas leases on appellants' property being canceled.

In July 1976, appellee, as unit operator, attempted to enter appellants' property to use the well located thereon as a water injection well and presumably recover oil from the other unit wells not located on appellants' property. Appellants prevented appellee from entering appellants'



property and appellee obtained an *ex parte* temporary restraining order on July 9, 1976, restraining appellants' interference. Armed with the temporary restraining order and before the hearing date of July 23, 1976, appellee entered appellants' property, dug ditches, laid pipelines, and injected salt water into the well on appellants' property.

On July 16, 1976, appellants answered appellee's petition for a permanent restraining order, denying appellee had any right to enter appellants' property. Appellants' answer pleaded their earlier quiet title suit canceling all oil and gas leases on appellants' property would prohibit appellee's right to enter appellants' property. Appellants' answer also pleaded the Oklahoma Corporation Commission order creating the Hawley West Unit was obtained by fraud. Appellants additionally filed a cross-petition against appellee for damages as the result of injury to the surface and for removal of equipment belonging to appellants. Subsequent answer and replies filed by the parties were in effect denials.

At the July 23, 1976 hearing the temporary injunction granted appellee was quashed. Numerous other hearings on motions, etc., were held, including one unsuccesful attempt by appellee to obtain a writ of prohibition from the Oklahoma Supreme Court.

On May 4, 1977, the case came on for pretrial hearing. At pretrial appellants provided the trial court with an exhibit stating the value of the property removed from appellants' property was $15,160. The trial court then entered summary judgment in the case. The summary judgment resulted in the trial court finding the Oklahoma Corporation Commission order creating the Hawley West Unit was valid and appellants were permanently enjoined from interfering with appellee and its agents' operations. Appellants were granted $15,160 in damages for the equipment removed from their property. The journal entry then states, "That the question of surface damages by defend-

ants (*sic*) from the operation of the unit is reserved by the Court until further order of the Court." Appellants now are challenging the trial court's judgment, arguing under three propositions of error.

Appellants' first proposition reads:

> "Can the District Court at a pretrial conference summarily dispose of questions of fact and render judgment therein?"

As best we can understand it, appellants' argument under this first proposition is that material fact questions exist; therefore, the trial court erred in granting summary judgment. Appellants' argument seems to be that appellants had valid defenses to appellee's petition; therefore, material facts exist, but appellants do not state what the material fact issues are. Thus, an examination of appellants' defenses is necessary.

Appellants' first defense is that appellants successfully quieted their title and all oil and gas leases on *appellants' property* were terminated. This defense overlooks the fact that appellants' property and other properties in the Hawley West Unit were subject to statutory unitization by order of the Oklahoma Corporation Commission, and *no lease on appellants' property was necessary* because of unit production. 52 O.S. 1971 §§ 287.5, 287.9; J. M. Young v. West Edmond Hunton Lime Unit, Okl., 275 P.2d 304 (1954). Therefore, appellants' first "defense" is contrary to law and no material fact issue existed in that regard.

Appellants' second defense is to the effect the Oklahoma Corporation Commission order creating the Hawley West Unit was obtained by fraud. This "defense" must also fail. First, one cannot collaterally attack an order of the Oklahoma Corporation Commission. 52 O.S.1971 § 111; Creslenn Oil Co. v. Corp. Comm'n, Okl., 244 P.2d 315 (1952). Any attack on such an order must be done by direct appeal to the Oklahoma Supreme Court. Town of



Centrahoma v. Carter Oil Co., Okl., 283 P.2d 199 (1955). Second, appellants were parties to and were present at the hearing before the Oklahoma Corporation Commission when the Hawley West Unit was created and appellants did not appeal the order. Third, as aforesaid, appellants admitted in their answers to interrogatories the "Mississippi Chat" formation underlaid their property and the "Mississippi Chat" formation was the common source of Supply of the Hawley West Unit. Under these circumstances this "defense" is also contrary to law and no material fact issue would exist in regard to this defense. These being the only defenses to appellee's petition for injunctive relief we must find the trial court correctly granted summary judgment for injunctive relief. Dist. Ct. Rule 13, 12 O.S.1973 Supp., Ch. 2 App.

Appellants' second proposition reads:

> "Can the District Court at a pretrial conference summarily determine without evidence or testimony, current property values and what has or has not been removed from the appellants' property by the appellee?"

This proposition presents somewhat of a problem because of the pleadings and evidence submitted. The problem results in an attempted piecemeal appeal of damages. The following discussion should make the problem before us apparent.

As we read the law in Oklahoma, appellants' attempt to appeal the "summary judgment" is premature as to the damages claimed in appellants' cross-petition. A partial appeal is not permitted in Oklahoma unless specifically provided for by statute or rule, and a "judgment" is not a final order until all the issues in controversy are resolved. Rule of Civil Appellate Procedure 1.10, 12 O.S. 1974 Supp., Ch. 15 App. 2; Rule of Civil Appellate Procedure 1.11, 12 O.S.1971, Ch. 15 App. 2; 12 O.S.1971 §§ 952,

953; Shaw v Sturgeon, Okl., 304 P.2d 341 (1956); Emerson v. Lewis, Okl., 274 P.2d 529 (1954).

In the present case under the above cited authority, appellants clearly had the right to appeal the granting of the injunction but not to appeal a partial judgment as to damages for removal of appellants' property — a judgment which would leave the issue of surface damages, if any, still in controversy. The obvious reason for these rules is to avoid multiple appeals in a single case.

The judgment as to the granting of injunctive relief is affirmed and the case is remanded to the trial court for final resolution of all issues in controversy as to damages.

Affirmed in part and remanded.

NEPTUNE, P. J., and BRIGHTMIRE, J., concur.

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IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

| | | |
|---|---|---|
| LENNIE B. WARREN and EVERETT R. WARREN, Appellants, | ) | |
| vs | ) | No. 51,027 |
| SUN OIL COMPANY (Delaware) a corporation, Appellee. | ) | |

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

NOTICE is hereby given that Lennie B. Warren and Everett R. Warren, the Appellants above named, hereby appeal to the Supreme Court of the United States on the final judgment of the Supreme Court of the State of Oklahoma, affirming the Summary Judgment granting injunction, entered in this action on February 15, 1979.



This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Respectfully submitted,

s/ Stephen Jones
Stephen Jones
Attorney for Appellants
P.O. Box 3339
Enid, Oklahoma 73701

Dated at Enid, Oklahoma, this 21st day of March, 1979.

This is to certify that a true copy of the foregoing instrument was mailed this date to all counsel of record herein.
s/ Stephen Jones

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## Supreme Court of the United States

No. A-984

LENNIE B. WARREN AND EVERETT R. WARREN,
Appellants,
v.
SUN OIL COMPANY

ORDER

UPON CONSIDERATION of the application of counsel for the appellants,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including June 14, 1979.

/s/ Byron R. White
Associate Justice of the Supreme
Court of the United States

Dated this 13 day of May, 1979

FILED
COURT OF APPEALS
STATE OF OKLAHOMA
SEP 21 1978
ROSS N. LILLARD, JR.
CLERK

IN THE COURT OF APPEALS, DIVISION 2
STATE OF OKLAHOMA

Wednesday, September 20, 1978

THE CLERK IS DIRECTED TO NOTIFY ALL PARTIES OF THE FOLLOWING ORDERS:

51,027 Sun Oil Company (Delaware), a corporation, Appellee, vs. Lennie B. Warren and Everett R. Warren, Appellants.

Appellants' Petition for Rehearing is denied.

* * * * * * *

s/ Paul Brightmire
PAUL W. BRIGHTMIRE
Acting Presiding Judge

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FILED
SUPREME COURT
STATE OF OKLAHOMA
FEB 12 1979
ROSS N. LILLARD, JR.
CLERK

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Monday, February 12, 1979

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

* * * * * * *

51,027 Sun Oil Co. v. Lennie Warren.
Certiorari denied.

* * * * * * *

s/ Pat Irwin
ACTING CHIEF JUSTICE

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